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IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

PANHANDLE EASTERN PIPE LINE COMPANY, *et al.*,
Petitioners,
v.
COLUMBIA GAS TRANSMISSION CORPORATION, *et al.*

FEDERAL ENERGY REGULATORY COMMISSION,
Petitioner,
v.
COLUMBIA GAS TRANSMISSION CORPORATION, *et al.*

On Petitions for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR CERTAIN RESPONDENTS IN OPPOSITION

GILES D. H. SNYDER
STEPHEN J. SMALL
COLUMBIA GAS TRANSMISSION CORPORATION
1700 MacCorkle Ave., S.E.
Charleston, W.Va. 25325-1273
(304) 357-2326

JOHN H. PICKERING
Counsel of Record
LOUIS R. COHEN
TIMOTHY N. BLACK
GARY D. WILSON
SUSAN D. MCANDREW
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037
(202) 663-6000
Attorneys for Columbia Gas Transmission Corporation

August 31, 1990

(Attorneys Continued on Inside Cover)

BEST AVAILABLE COPY

DANIEL L. SCHIFFER
MICHIGAN CONSOLIDATED GAS COMPANY
500 Griswold Street
Detroit, MI 48226
(313) 256-5206

JEFFREY M. PETRASH
DICKINSON, WRIGHT, MOON, VAN DUSEN & FREEMAN
1901 L Street, N.W.
Washington, D.C. 20036
(202) 457-0160
Attorneys for Michigan Consolidated Gas Company

KATHLEEN A. KANE
OBERMAYER, REBMANN, MAXWELL & HIPPEL
14th Floor, Packard Bldg.
15th & Chestnut Streets
Philadelphia, PA 19102
(215) 665-3222
Attorney for Philadelphia Electric Company

LARITO FARINAS
PHILADELPHIA GAS WORKS
800 West Montgomery Ave.
Philadelphia, PA 19122
(215) 684-6982
Attorney for Philadelphia Gas Works

EDWARD J. GRENIER, JR.
WILLIAM H. PENNIMAN
GLEN S. HOWARD
STERLING H. SMITH
SUTHERLAND, ASBILL & BRENNAN
1275 Pennsylvania Ave., N.W.
Washington, D.C. 20004-2404
(202) 383-0100
Attorneys for The Process Gas Consumers Group

MARY E. BALUSS
CHRISTOPHER J. BARR
MORGAN, LEWIS & BOCKIUS
1700 M Street, N.W.
Suite 700
Washington, D.C. 20036
(202) 467-7142
Attorneys for UGI Corporation

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QUESTION PRESENTED

Whether the power of the Federal Energy Regulatory Commission, under section 4(d) of the Natural Gas Act, 15 U.S.C. § 717c(d), to "allow changes [in rates] to take effect without requiring the thirty days' notice herein provided for," includes the power to authorize pipelines to collect retroactive additional charges for gas sold long before any filing reflecting the additional charges.

RULE 29.1 STATEMENT

Respondent Columbia Gas Transmission Corporation is a wholly-owned subsidiary of The Columbia Gas System, Inc.

Respondent Michigan Consolidated Gas Company is a wholly-owned subsidiary of MCN Corporation.

Respondent UGI Corporation has one subsidiary that is not wholly-owned, A P Propane, Inc.

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BRIEF FOR CERTAIN RESPONDENTS IN OPPOSITION

STATEMENT

This case involves orders of the Federal Energy Regulatory Commission granting "waivers" of the notice requirement of section 4(d) of the Natural Gas Act, 15 U.S.C. § 717c(d), and thereby purportedly allowing the private petitioners, four interstate pipelines, to collect additional charges for gas sold during earlier periods. Respondents are downstream pipelines, local distribution

companies, and industrial users that are direct or indirect customers of the petitioner pipelines.[1]

The Commission initially authorized the retroactive additional charges in orders issued in 1985. In 1987, the court of appeals struck down these orders because the additional charges violated the Act's requirement that a pipeline charge only the rates on file at the time the gas is sold. Pet. App. 42a-56a (*Columbia I*).[2] No party sought review of that decision in this Court.

In 1988, on remand, the Commission issued the order now under review,[3] Pet. App. 17a-26a, again authorizing the retroactive additional charges, but now relying on its power under section 4(d) to "allow changes to take effect without requiring the thirty days' notice herein provided for." 15 U.S.C. § 717c(d). In 1990, in the decision from which petitioners now seek review, Pet. App. 1a-14a (*Columbia II*), the court of appeals held that the Commis-

[1] The respondents for which this brief is filed are Columbia Gas Transmission Corporation, Michigan Consolidated Gas Company, Philadelphia Electric Company, Philadelphia Gas Works, the Process Gas Consumers Group, and UGI Corporation.

[2] "Pet App." refers to the appendix to the petition for writ of certiorari in *Panhandle Eastern Pipe Line Co. v. Columbia Gas Transmission Corp.*, No. 89-2001 (filed June 22, 1990).

[3] In addition to the Commission's order in the remanded proceedings, the Commission in 1988 issued an order authorizing one of the pipeline petitioners, Panhandle Eastern Pipe Line Company (Panhandle), to direct bill its customers for $17 million in certain other production-related costs that had been allowed by Orders Nos. 473 and 473-A (*Compression Allowances and Protest Procedures Under NGPA Section 110*, FERC Stats. & Regs., Regs. Preambles ¶¶ 30,747, 30,788 (1987)) based on customers' purchases from December 1979 to December 1984. Pet. App. 33a-40a. As in the orders issued on remand after *Columbia I*, the Commission relied on its section 4(d) power to waive the thirty days' notice requirement to authorize Panhandle's direct billing procedure. In the consolidated proceedings below, the court of appeals struck down the Order No. 473 direct billing order as well as the direct billing orders issued on the remand.

sion's power to waive the 30-day notice period of section 4(d) did not authorize it to impose, on unwarned and unwilling customers, a price increase for sales that occurred as much as eight years prior to the rate filing.

Neither in *Columbia I* nor in *Columbia II* did the court of appeals bar the petitioner pipelines from recovering the production-related costs that gave rise to the charges at issue. It held only that such recovery must be done prospectively—for example, by including the costs in the pipelines' charges to customers for current and future service. *See id.* at 4a, 54a. As described below, other interstate pipelines recovered the same production-related costs from their customers in that manner, as did one of the petitioner pipelines before it sought and obtained authority from the Commission in 1985 to switch to the retroactive recovery method held unlawful in this case.

1. Producers Collection of Section 110 Costs from Pipelines

In the Natural Gas Policy Act of 1978 ("NGPA"), 15 U.S.C. § 3301 *et seq.*, Congress established ceiling prices for "first sales"[4] of certain categories of natural gas. In section 110 of the NGPA, 15 U.S.C. § 3320(a), Congress authorized the Commission to allow recovery by first sellers (*i.e.*, gas producers) of certain production-related costs, including compression and gathering costs, in addition to the maximum prices otherwise permitted by the statute.

In 1978, the Commission adopted interim regulations governing producers' applications for recovery of production-related costs pursuant to section 110. In 1980, however, in Order No. 94, *Order Amending Interim Regulations Under the Natural Gas Policy Act of 1978 and Establishing Policy Under the Natural Gas Act*, FERC

[4] Generally, "first sales" of natural gas are sales by gas producers to pipeline companies that in turn resell the gas to other pipelines, wholesale distributors, and large industrial customers.

Stats. & Regs., Regs. Preambles ¶ 30,178 (July 25, 1980), the Commission announced that effective July 25, 1980, it would no longer accept producers' applications for recovery of compression or gathering costs until it had completed proceedings to determine appropriate generic allowances for such costs. *Id.* at 31,218. The Commission assured producers, however, that upon adoption of such allowances "a retroactive collection procedure will be provided under which the [generic allowances] . . . will be applied to costs incurred with respect to gas delivered on or after the effective date of this Rule [July 25, 1980] *if collection of such costs is contractually authorized.*" *Id.* (emphasis added).

In 1983, in Order No. 94-A, *Regulations Implementing Section 110 of the Natural Gas Policy Act of 1978 and Establishing Policy Under the Natural Gas Act*, FERC Stats. & Regs., Regs. Preambles ¶ 30,419 (Jan. 24, 1983), and an accompanying interim rule,[5] the Commission promulgated its promised regulations authorizing producers to collect compression and gathering costs from their pipeline purchasers. Producers were authorized to collect production-related costs on a current basis beginning with the March 7, 1983, effective date of the new regulations. *Id.* at 30,355. With respect to costs incurred by producers in the period July 25, 1980, through March 7, 1983, producers were authorized to collect these costs retroactively in installments between March 1983 and December 1984 if their contracts with pipelines so provided. *Id.* at 30,368.

2. Pipelines' Recovery of Section 110 Costs from Their Customers

Order No. 94 and Order No. 94-A and the accompanying regulations dealt with collection of production-related costs by the producers from their pipeline first-purchas-

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[5] 48 Fed. Reg. 5180 (1983); *see* 18 C.F.R. § 271.1104(d)(1) (1990).

ers. Neither order dealt with how the producer charges would be recovered by first-purchaser pipelines from *their* customers. At the time Orders 94 and 94-A were issued, however, long established Commission policy provided for the recovery of such costs by means of the purchased gas adjustment ("PGA") clause of a pipeline's tariff.[6] Current production-related costs, which pipelines pay currently to gas producers, would be reflected in the pipelines' current PGA-adjusted rates. With regard to a pipeline's installment payments to producers for retroactive charges, the Commission's regulations governing recovery of costs of gas purchased by pipelines expressly provided (and still provide) for prospective adjustments to a pipeline's commodity rates in order to compensate for over- and under-recovery of the costs of gas purchased in prior periods. *See* Comm. Pet. 5 n.3; 18 C.F.R. § 154.305 (1990).[7] Such prospective rate adjustments had long been held by the Commission to be the proper method of recovery by a pipeline for "deferred costs" paid to a producer in a present period but attributable to gas delivered in a past period.[8] Thus, to

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[6] *See* Order No. 452, *Purchased Gas Cost Adjustment Provision in Natural Gas Pipeline Companies' FPC Gas Tariffs*, 47 FPC 1049 (1972); *see generally*, 18 C.F.R. §§ 154.301-154.310 (1990).

[7] While the PGA mechanism for "truing up" recovery of past gas costs is a departure from the normal process of setting fixed rates for the future based on estimates derived from historical experience, the court of appeals has held that it does not violate the filed rate doctrine or the rule against retroactive rate making since the amounts in question are included in current gas sales rates, and customers can take them into account in making their purchase decisions. *See Transwestern Pipeline Co. v. FERC*, 897 F.2d 570, 579-80 (D.C. Cir. 1990). Also, the PGA mechanism itself is on file as part of the pipeline's tariffs. *Cf. Public Serv. Co. of New Hampshire v. FERC*, 600 F.2d 944, 960 (D.C. Cir.), *cert. denied*, 444 U.S. 990 (1979).

[8] *See Tennessee Gas Pipeline Co.*, 29 FERC ¶ 61,150 at 61,327 (1984) (noting use of PGA mechanism to amortize deferred costs over prospective six-month period as traditional means of recovery for past period gas costs).

the extent that Order No. 94-A mentioned the *pipeline's* recovery at all, it clearly contemplated that such costs would be recovered in the traditional manner, *i.e.*, prospectively through the pipeline's PGA mechanism.[9]

Consistent with the Commission's established policy, when producers began to bill pipelines for current and retroactive compression and gathering cost allowances in 1983, some interstate pipelines paid the producers and collected those costs from their customers by means of prospective adjustments to their PGA rates. With regard to "amounts relating to past periods," the Commission specifically concluded that they were "appropriate for recovery by way of . . . [the] PGA clause through inclusion in Account No. 191 and a subsequent surcharge." *Texas Eastern Transmission Corp.*, 28 FERC ¶ 61,182, at 61,344 (1984). In accordance with the normal PGA procedure, such surcharges were recovered from pipeline customers in the six-month PGA period immediately following the payments to producers. *See* Comm. Pet. 5 n.3.

Other pipelines, however, delayed paying producers both the current and the retroactive production-related costs.[10] Beginning in 1983, some pipelines were starting to have difficulty in selling gas at prices that reflected their high-cost purchases in the late 1970s and early 1980s. By delaying payment of production-related costs, a pipeline could lower its PGA-adjusted prices relative to the PGA rates of pipelines that had instituted produc-

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[9] The Commission noted that an interstate pipeline "may receive compensation for paying . . . section 110 allowances *through its purchased gas adjustment clause.*" Order No. 94-A, FERC Stats. & Regs. at 30,369 (emphasis added).

[10] *See* Order No. 399-A, *Refunds Resulting From Btu Measurement Adjustments*, FERC Stats. & Regs., Regs. Preambles ¶ 30,612 at 31,208 (Nov. 20, 1984).

tion-cost payment and PGA recovery promptly, as the Commission's 1983 order had contemplated.

Delay in payment of production costs (and in their PGA recovery) reduced a pipeline's rates initially, but it had the effect of exacerbating the difficulty of eventual recovery of these costs from the pipeline's customers by building up the unpaid costs and increasing the size of the next PGA rate adjustment when the costs were eventually paid. To deal with this problem, petitioner Transcontinental Gas Pipe Line Corporation (Transco) sought and obtained permission in its September 1984 PGA filing to implement a special 4.5 cent prospective surcharge during the six months beginning November 1, 1984, for recovery of installments of retroactive production-related costs it anticipated paying in the last half of 1984, as well as a regular 5.5 cent prospective surcharge to recover "production related charges, both 'current' and 'retroactive,' that it had paid in the prior six months." *Transcontinental Gas Pipe Line Corp.*, 29 FERC ¶ 61,148, at 61,319 (1984).

In 1985, however, Transco—which had by then recovered over one quarter of the amounts it had paid to producers for production-related costs—reversed course. In its May 1985 PGA filing, Transco deleted the PGA surcharge the Commission had previously authorized and announced an intent to charge such amounts to its customers by a retroactive "direct bill." *See Transcontinental Gas Pipe Line Corp.*, 31 FERC ¶ 61,129 (1985).[11] Subsequently, Transco filed its "direct bill" proposal, which assessed each customer a share of the production related charges attributable to the gas Transco purchased from producers between July 1980 and August 1984 in proportion to that customer's share of gas purchased

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[11] To "avoid a double-collection," Pet. App. 70a, Transco proposed to refund the approximately $32 million that it had already recovered through its prospective PGA-adjusted rates.

from the pipeline in that period.[12] Appendix, *infra*, 5a. These charges were to be independent of and unaffected by the customer's current level of contractual entitlement or purchases from the pipeline. As the court of appeals held in *Columbia I*, the proposed charges amounted to a retroactive surcharge on rates paid by pipeline customers for gas they had purchased in past periods. Pet. App. 51a.

Transco's petition was not based on any claim that continued recovery of its production-related costs through its PGA mechanism would be impossible. Nor did Transco concede that its objective was to keep its current charges low by imposing a retroactive surcharge on completed transactions. Rather, Transco asserted that direct billing "is the most logical and equitable method of assigning cost responsibility for this extraordinary, out-of-period item." Appendix, *infra*, 15a.

3. Commission Approval of Direct Billing

In August 1985, the Commission granted Transco's direct billing proposal, finding it "equitable" because it "imposes the cost responsibility on the customers who bought the gas." Pet. App. 70a.

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[12] The petitioner pipelines state that the question presented is whether the Commission may permit recovery of costs that arose during the 1980-83 "moratorium" period and argue throughout their petition that the Commission's "moratorium" on collection by producers of production-related costs makes the retroactive recovery by pipelines equitable and lawful. *See* Pan. Pet. (i), 3, 7, 11, 16, 20; *cf.* Comm. Pet. 8, 12. It should be noted, however, that the "moratorium" was lifted as of March 7, 1983. Yet in each case, the petitioner pipelines sought and were authorized to recover production-related costs incurred for gas sold in a "retroactive period" that went well beyond the end of the "moratorium." *See* Pet. App. 61a (Transco: July 25, 1980 to August 31, 1984); 87a (Texas Gas: August 1, 1980 to December 31, 1984); 99a (Trunkline: July 25, 1980 to February 28, 1985); 110a (Panhandle: August 1, 1980 to February 28, 1985).

The Commission rejected contentions by a number of protesters that the proposal constituted an unlawful retroactive increase in the rates charged for past gas sales. The Commission dismissed these contentions as "without merit" and "in effect . . . a collateral attack on Order No. 94-A" because "Order No. 94-A expressly authorized the collection of retroactively effective allowances which, to the extent directly billed now, are a cost to those customers." *Id.*[13]

Following Transco's direct billing proposal, a number of other pipelines—including Texas Eastern Transmission Corporation and petitioners Texas Gas Transmission Corporation, Panhandle Eastern Pipe Line Company and Trunkline Gas Company—also filed direct billing proposals modeled after Transco's.[14] In a series of orders issued late in 1985, the direct billing proposals of these four pipelines were approved on the basis of the *Transco* precedent. Pet. App. 79a-86a (Texas Eastern); 87a-96a (Texas Gas); 97a-109a (Trunkline); 110a-123a (Panhandle). At about the same time, on rehearing of its Transco approval, the Commission again rejected contentions that the direct billing scheme constituted an unlawful retroactive rate increase, asserting once again that "Order No. 94-A expressly authorized the collection of retroactively effective allowances." *Id.* at 129a. Responding to the argument that similar deferred costs had

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[13] The Commission also waived the provisions of its regulations requiring that all changes in pipeline rates be reflected in filed tariff sheets. The Commission found that no purpose would be served by such filing in view of the retroactive nature of the new "rates":

> Any such [tariff] sheets would necessarily change each month and would consist of a listing company-by-company, of the actual amounts billed. . . . [T]he original gas costs to which these section 110 payments apply were reflected on tariff sheets. *Here, we are permitting retroactive change in those costs* . . . .

Pet. App. 72a (emphasis added).

[14] *See id.* at 79a; 87a; 97a; 110a.

always been recovered prospectively through PGA adjustments, the Commission stated that the production-related cost payments were "different" because "these amounts [the production-related costs] were authorized by special rule on a continuing, not a one-time only, basis, and are so large as to warrant special treatment." [15] *Id.* Subsequently, the Commission likewise denied rehearing of its approval of the four other pipelines' direct billing proposals. *Id.* at 134a (Texas Eastern); 135a (Texas Gas); 136a-39a (Trunkline); 140a-42a (Panhandle).

4. Judicial Review and Reversal of Retroactive Direct Billing

A number of customers of the five pipelines challenged these orders in the D.C. Circuit on the ground that they constituted an unlawful retroactive rate increase. In *Columbia I*, the court of appeals overturned the Commission's approval of the five direct billing proposals. The court found that the orders violated the rule against retroactive ratemaking, which it characterized as "derived from the provisions in the NGA requiring sellers of natural gas to file their rates with the Commission

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[15] Claims that these costs are "extraordinary" are, at the very least, exaggerated. For example, in May 1984 the Commission found a Transco proposal for PGA recovery of some $61 million in deferred costs over a six month period to be "consistent" with Transco's history of recovering other deferred costs ranging from $53 million to $89 million in other recent six-month periods. *Transcontinental Gas Pipe Line Corp.*, 27 FERC ¶ 61,227 at 61,437 n.6 (1984). Similarly, in 1984 the Commission authorized another petitioner—Panhandle—to recover through its PGA over a 39-month period an "enormous" build-up of unrecovered gas costs attributable to past periods amounting to some $270 million. *See Panhandle Eastern Pipe Line Co. v. FERC*, 777 F.2d 739 (D.C. Cir. 1985). Some pipelines also recovered through PGA adjustments the costs arising from repricing their own production pursuant to the decision in *Mid-Louisiana Gas Co. v. FERC*, 664 F.2d 530 (5th Cir. 1981), *aff'd in part and vacated in part sub nom. Public Serv. Comm'n v. Mid-Louisiana Gas Co.*, 463 U.S. 319 (1983). *See, e.g., Consolidated Gas Supply Corp.*, 24 FERC ¶ 61,271 (1983).

[section 4] and defining its authority to modify them [section 5]." Pet. App. 52a. The court described these statutory provisions as forming the basis for the "filed rate doctrine" as articulated by this Court in *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 578 (1981) (*Arkla*):

> [T]he [Natural Gas] Act bars a regulated seller of natural gas from collecting a rate other than the one filed with the Commission and prevents the Commission itself from imposing a rate increase for gas already sold.

The court found that the direct billing orders of the Commission violated the rule against retroactive ratemaking and the filed rate doctrine because:

> the effect of the orders is quite clear: downstream purchasers are expected to pay a surcharge, over and above the rates on file at the time of sale, for gas they had already purchased. However described, this constitutes a retroactive rate increase that we find to be prohibited by the NGA.

Pet. App. 51a.

The court rejected the Commission's argument that Order No. 94-A in 1983 had established a "retroactive collection procedure" for pipelines. The court pointed out that Orders 94 and 94-A were addressed solely to recovery of production-related costs by producers from first purchasers, and the orders did not deal with the procedures for collection by pipelines from their customers. *Id.* The court concluded that there was no reason at all for pipeline customers in 1980-83 to suppose that they would be subject to retroactive direct charges, since such recovery had never been permitted by Commission policy and the Commission's regulations expressly required that such deferred costs be recovered prospectively through the PGA mechanism.

The Commission petitioned for rehearing, asserting for the first time that it had authority under section 4(d) of the Natural Gas Act to "waive" the filed rate doctrine to allow the direct billing procedures to go into

effect. *See* Pet. App. 58a-59a. The court denied rehearing but stated that the Commission could consider on remand whether the statute permits a waiver of the filed rate doctrine and, if so, whether such a waiver would be appropriate in the circumstances of these cases. *Id.* at 59a.

5. The Commission's Effort To Sanction Retroactive Direct Billing by Waiver

Without any hearing or further proceedings, the Commission on remand again approved the same direct billing mechanisms that the court had struck down in *Columbia I*. Pet. App. 17a-26a. This time, the Commission relied solely on its authority under section 4(d) of the Act to "allow changes to take effect without requiring the thirty days' notice herein provided for." The Commission asserted that its "authority to waive the filed rate doctrine and its discretion whether to exercise this authority in particular circumstances are unquestioned," subject only to the statutory requirement that the waiver must be based on "good cause shown." *Id.* at 21a. FERC found that good cause existed for waiver of the filed rate doctrine in each of the remanded proceedings for the same reasons advanced in its original orders approving the rate changes. *Id.* at 22a-23a.

Several of the present respondents sought rehearing, arguing that the Commission could not rely on its waiver authority under section 4(d) to impose a retroactive rate increase, that the Commission had failed to explain its departure from its longstanding policy of permitting waivers only to allow previously contracted-for rates to take effect prospectively from the date set by the contract, and that the Commission does not have equitable powers to take actions that are contrary to the statute. *See* Pet. App. 28a-29a. The Commission rejected these arguments on the basis of an unexplained "overwhelming public interest" that would be "impeded" by normal prospective ratesetting. *Id.* at 32a.

6. The Decision Below Rejecting the Claimed Waiver Authority To Impose Retroactive Rate Increases

In *Columbia II*, the court of appeals rejected the Commission's argument that its waiver authority permits it to allow a pipeline to impose additional charges for transactions completed before any rate filing containing the charges. The court noted that the language of section 4(d) only authorizes the Commission to allow rate changes "to take effect without requiring the thirty days' notice herein provided for." Pet. App. 10a. The court also pointed out that the few decisions that have allowed rate changes to become effective as of a date prior to their filing had all been cases in which the customers had by contract prospectively consented to the pre-filing effective date. *Id.* at 11a-12a. The court concluded, without reaching the question of "good cause," that the Commission lacked statutory power to do what it did: "[W]e are unaware of any principle in equity or law that empowers an agency to ignore explicit legislative commands . . . ." *Id.* at 13a.

The private petitioners, but not FERC, sought rehearing *en banc*, which was denied unanimously. *Id.* at 15a.

ARGUMENT

The court of appeals properly rejected FERC's assertion, made for the first time in this case, that FERC's power under section 4(d) of the Natural Gas Act to allow rate "changes to take effect without requiring the thirty days' notice herein provided for" includes the power to allow a pipeline to impose a retroactive additional charge for gas sales that occurred years earlier. FERC's reading of the statute would obliterate (but only in favor of sellers and not for the protection of customers) the well-established principle that FERC has "no power to alter a rate retroactively." *Arkla*, 453 U.S. at 578. This case presents no issue worthy of this Court's review.

Certiorari Is Not Warranted in This Case

1. Contrary to the Solicitor General's submission, the court of appeals' ruling was based squarely on the statute. In *Columbia I*, from which no party sought review in this Court, the court of appeals first found that "the effect of [FERC's] orders is quite clear: downstream purchasers are expected to pay a surcharge, over and above the rates on file at the time of sale, for gas they had already purchased. However described, this constitutes a retroactive rate increase." Pet. App. 51a.[16]

Decades of authority have established that under the Natural Gas Act, as under other major federal ratemaking statutes, the Commission may neither authorize a "rate increase for gas already sold" nor impose a "retroactive rate alteration." *Arkla*, 453 U.S. at 578 and n.8. This rule against retroactive ratemaking, as the court of appeals held (*Columbia I*, Pet. App. 51a-52a), flows directly from sections 4 and 5 of the Act, which require that charges for jurisdictional natural gas service be set forth in publicly filed tariffs and that any changes in those rates be made prospectively. In *Columbia II*, the court's discussion centered on "the scope of the section 4(d) waiver authority" (*id.* at 9a), and its ruling was that "the statutory language of section 4(d) and the logic of [certain earlier decisions] deny the Commission the authority its claims." *Id.* at 10a.

Section 4(c), 15 U.S.C. § 717c(c), requires that rates be set forth in tariffs filed with the Commission. Pipeline-initiated changes to filed rates are governed by section 4(d), 15 U.S.C. § 717c(d). That section first

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[16] Neither the Commission nor the pipeline petitioners challenged or now challenge the court of appeals' holding in *Columbia I* that the "direct billing" proposals approved by the Commission impose on pipeline customers an added charge for gas those customers had already purchased. As the Fifth Circuit held in *Hall v. FERC*, 691 F.2d 1184, 1191 (5th Cir.), *cert. denied sub nom. Arkla, Inc. v. Hall*, 464 U.S. 822 (1983), a "purer example" of a retroactive rate increase would be "difficult to imagine."

provides that no change may be made in any filed rate "except after thirty days' notice to the Commission and to the public." The notice may be given only "by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes . . . and the time when the change or changes *will* go into effect." *Id.* (emphasis added). The next sentence provides that the Commission "for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they *shall* take effect and the manner in which they *shall* be filed and published." *Id.* (emphasis added).[17]

On its face, section 4(d) gives the Commission only the power to shorten or eliminate the required thirty-day notice period.[18] The statute requires a pipeline to make its filing thirty days before the rate changes "will" go into effect. It permits the Commission to dispense with this notice, but only by an order specifying when the changes "shall" go into effect. Nothing in this language suggests that the Commission may allow an additional charge to be imposed on gas sales completed before the change-of-rate filing is made.

Consistent with these basic statutory provisions, this Court has held that the Commission may not allow a

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[17] Section 5, 15 U.S.C. § 717d, which is not involved in this case, provides the only other means by which rates may be changed, and it too makes clear that changes are to be prospective only. It provides that if the Commission reaches a determination that existing rates are unjust or unreasonable, the Commission may then prescribe the just and reasonable rate "to be thereafter observed." *See FPC v. Sierra Pacific Power Co.*, 350 U.S. 348, 353 (1956). (*Sierra* arose under the corresponding section of the Federal Power Act. The Court has an "established practice of citing interchangeably decisions interpreting the pertinent sections of the two statutes." *Arkla*, 453 U.S. at 577 n.7.)

[18] The Commission concedes in its petition that section 4(d) "can be" so read. Comm. Pet. 13.

pipeline to alter rates retroactively, pursuant to new tariffs filed by the pipeline under section 4. *FPC v. Tennessee Gas Transmission Co.*, 371 U.S. 145, 152-53 (1962). The D.C. Circuit has followed suit, holding that the Act bars the "Commission's retroactive substitution of an unreasonably high or low rate with a just and reasonable rate." *City of Piqua v. FERC*, 610 F.2d 950, 954 (D.C. Cir. 1979) (quoted with approval in *Arkla*, 453 U.S. at 578). That court has described this as a "cardinal principle of ratemaking" that binds both the utility in initially setting its rates and the Commission in approving or imposing changes in those rates. *Nader v. FCC*, 520 F.2d 182, 202 (D.C. Cir. 1975). Not surprisingly, neither the Commission nor the petitioner pipelines have cited any decision of this or any other court permitting the retroactive imposition of an additional charge on customers for gas bought in prior periods.[19]

The reading of the statute now urged by the Commission and the petitioner pipelines would produce a bizarre result contrary to the clear intent of the Act. Both petitioners are clear that the Commission has no authority to impose a retroactive rate *reduction* under section 5, even after finding (on a customer complaint or its own initiative) that a filed rate is unjust and unreasonably high (Comm. Pet. 17; Pan. Pet. 13-14): Section 5 permits the Commission only to prescribe a rate "to be thereafter observed," and this Court has squarely held that FERC is limited by the section to prescribing a reasonable rate for the future. *See* note 17, *supra*. But the Commission argues it may approve retroactive rate *increases* sought

[19] Petitioner pipelines' suggestion, Pet. 11, that this case does not "concern the filed rate doctrine," since "no party here is seeking to enforce a rate not filed with and accepted by, the Commission," is specious. It is directly refuted by this Court's holding in *Arkla* that a "retroactive rate increase" is "precisely what the filed rate doctrine forbids." 453 U.S. at 578-79. Indeed, on the remand after *Columbia I*, the Commission stated that the issue was whether it should "waive the filed rate doctrine." Pet. App. 21a.

by a pipeline under section 4 whenever it finds "good cause." That asymmetrical outcome would stand on its head a statutory scheme whose primary purpose was to provide a "complete, permanent and effective bond of protection" for consumers. *Atlantic Ref. Co. v. Public Serv. Comm'n*, 360 U.S. 378, 388 (1959). It is hardly surprising that no court or (until these cases) agency has so read the statute.

2. Petitioners make several further arguments in support of a grant of the writ in this case. None has merit.[20]

a. Contrary to the submissions of the petitioner pipelines, this case does not present the "waiver" question left unresolved by this Court in *Arkla*. That case involved a rate that had been *contractually agreed to* but not filed. The Court said, 453 U.S. at 578 n.8 (emphasis by the Court):

> Although the Commission may not *impose* a retroactive rate alteration . . . it may 'for good cause shown' . . . waive the usual requirement of timely filing of an alteration in a rate. Assuming, *arguendo*, that waiver is available for retroactive collection of a higher rate than the one on file, we note that [the Commission expressly rejected any waiver in this case].

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[20] The petitioner pipelines imply that this case is important because what is at issue is "approximately $1.5 billion" in industry-wide "moratorium" period costs. Pan. Pet. 3. Where the figure came from is unclear. (The Commission at one point noted estimates of "up to" that figure. Pet. App. 29a n.8). But in any event, most of these costs have long since been paid and recovered through mechanisms that have not been challenged.

The Commission more accurately estimates the magnitude of the costs at issue here as the approximately $500 million in production-related costs that petitioner pipelines and Texas Eastern have collected under the direct bill mechanisms authorized by FERC's orders. Comm. Pet. 7 n.5. A part of that amount, however, plainly related to recovery of costs arising out of gas sold well after the end of the "moratorium" period. *See* note 12, *supra*.

The present case, unlike *Arkla*, involves an attempt to "impose" a retroactive rate increase on unwilling customers who fully paid the rates that were on file when the sales in question were completed; nothing in *Arkla* suggests that there is any open question about whether the Commission has power to do that.

b. Petitioners cite cases in which courts of appeals have permitted the Commission, acting under section 4 (d), to sanction a pre-filing effective date for a rate change agreed to by the parties before it became effective.[21] The rationale for these rulings was that the change was not "retroactive" where the parties to the change had agreed to it in advance by contract. The continuing validity of these decisions may be in question;[22] in any event, they have no bearing here: whether the Act permits the Commission to allow a private contract, phrased prospectively, to take effect, in accordance with the wishes of the parties, prior to the date of filing is *not* the issue in this case. What the court below declared (consistent with every other decided case) is that the seller and the Commission together cannot retroactively *impose* a rate change never agreed to by the customer.

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[21] Comm. Pet. 14-15, citing *City of Piqua*, 610 F.2d 950 (D.C. Cir. 1979); *Hall v. FERC*, 691 F.2d 1184 (5th Cir. 1983); *Towns of Concord & Wellesley v. FERC*, 844 F.2d 891 (1st Cir. 1988); Pan. Pet. 14 n.7, citing *City of Piqua*.

[22] All of the cited decisions were rendered before this Court's decision in *Maislin Indus., U.S., Inc. v. Primary Steel, Inc.*, No. 89-624, 110 S. Ct. 2759 (1990), rejecting the authority of the Interstate Commerce Commission to allow negotiated rather than filed rates to be charged. The Court has, in other contexts, recognized that private contracts have an important role under the Natural Gas Act, which differs in this regard from the Interstate Commerce Act. *See FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956); *United Gas Pipe Line Co. v. Mobile Gas Serv. Co.*, 350 U.S. 332 (1956). Whether this role distinguishes *City of Piqua*, *Hall*, and *Concord* sufficiently to allow them to survive *Maislin* is a question not presented in this case.

c. The pipeline petitioners stress the fact that in *Texas Eastern Transmission Corp. v. FERC*, 769 F.2d 1053, 1066 (5th Cir. 1985), *cert. denied*, 476 U.S. 1114 (1986), the court of appeals rejected a challenge to FERC's Order No. 94-A, which authorized *producers* to recover earlier production-related costs through retroactive charges to pipelines. But as the Fifth Circuit stressed, "the purchasers [*i.e.*, the pipelines] were on notice as of 1980 [the beginning of the production-cost period, by virtue of FERC Order No. 94] that allowances would eventually be promulgated" (*id.* at 1066). Moreover, Order No. 94 expressly provided for such recovery from pipelines only "if collection of such costs is contractually authorized." FERC Stat. & Regs. at 31,218.

There is no conflict between the decision below and the Fifth Circuit's decision in *Texas Eastern*. The Fifth Circuit's decision allowed retroactive cost recovery *by producers* pursuant to the explicit advance notice given in 1980 in Order No. 94, and in accordance with express authority in the existing contracts between producers and pipelines. *Compare City of Piqua*, 610 F.2d at 954. In the present case, respondent pipeline customers neither received advance notice of the charges in question (by Commission order or otherwise) nor contractually authorized the pipelines to collect them.[23]

As noted above, the decision below does not bar pipelines from recovering from their customers the costs allowed to be charged to them by producers under *Texas-Eastern*;[24] it merely requires that this be done by means that do not constitute a retroactive rate increase.

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[23] Petitioners suggest that because one of the respondents, Columbia, is itself a pipeline, it was effectively on notice of the charges the Commission ordered in the present case. Even if the accidental status of one of the respondents were pertinent, there can be no question that *no one* was on notice before 1985 that pipeline *customers* would be direct-billed, based on their purchases in 1980-85, for these costs.

[24] For this reason there is no merit to suggestions that the court of appeals' decision violates the "pass through" requirement of the

d. Contrary to FERC's implication, Comm. Pet. 5-6, the restructuring of the gas industry in which pipelines became "open access" transporters has essentially nothing to do with the issues in this case.[25] FERC began authorizing retroactive direct billing of production-related costs *before* it issued FERC Order No. 436,[26] which encouraged pipelines to become open access, and all of the FERC orders that originally authorized such billing by the pipeline petitioners were issued before such petitioners became open-access pipelines.

NGPA. As the Commission has itself recognized, that Act does not require that pipelines be afforded guaranteed recovery of costs, but merely a *fair opportunity* to recover legitimate costs. *See* Order No. 500, *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, FERC Stats. & Regs., Regs. Preambles ¶ 30,761 at 30,786 (Aug. 7, 1987). The Commission and the court of appeals have repeatedly recognized that the PGA mechanism affords such an opportunity to recover gas costs.

[25] The Commission incorrectly states that only one producer began recovery of costs before the 1985 decision of the Fifth Circuit in *Texas Eastern*. Comm. Pet. 5. In fact, the Commission had ordered that all costs for the 1980-83 period be recovered in installments ending in December 1984, and some pipelines paid their producers as the Commission envisioned. *See* p. 6, *supra*.

It may well be that other pipelines delayed paying production-related costs pending judicial review of Order No. 94-A in the hope that it would be reversed on appeal. But there was no stay of Order No. 94-A in effect, and having failed to process and recover production-related costs in the time provided for by the Commission, petitioner pipelines should not be heard to complain as they now do that "the customer base of the pipelines had changed to an unprecedented degree between the lifting of the Commission's moratorium in 1983 and the time of the Fifth Circuit's *Texas Eastern* decision in 1985" by which time "the pipeline segment of the industry was in the process of a massive restructuring." Pan. Pet. 6-7.

[26] *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, FERC Stats. & Regs., Regs. Preambles ¶ 30,665 (Oct. 9, 1985).

Moreover, the argument that the Commission should be able to ignore the filed rate doctrine because it needs "latitude" in order to deal with "the massive restructing of the natural gas market" (Comm. Pet. 19) was decisively answered by this Court in *Maislin Indus., U.S., Inc. v. Primary Steel, Inc.*, No. 89-624, 110 S. Ct. 2759 (1990). As the Court said there, if "strict adherence" to statutory requirements has become "an anachronism," the responsibility for modifying the statutory scheme lies with Congress. *Id.* at 2771.[27]

Indeed, the expansive view of the Commission's section 4(d) waiver powers espoused by petitioners is fundamentally inconsistent with the view of the filed rate doctrine taken by this Court in *Maislin*. While the role of the filed rate doctrine under the Natural Gas Act is not identical to that under the Interstate Commerce Act, there is no basis for contending that the protective purposes of the doctrine are less fundamental or less grounded in statute here. To the contrary, in light of the long history of interpretation of the Natural Gas Act referred to above, it is clear that what this Court said of the agency's effort to rewrite the statute in *Maislin* is equally true here: "Although the Commission has both the authority and expertise generally to adopt new policies when faced with new development in the industry, . . . it does not have the power to adopt a policy that directly conflicts with its governing statute." 110 S. Ct. at 2770.

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[27] There is no substance to petitioners' suggestion that the holding below will have untoward effects on the electric power industry. The traditional view of the filed rate doctrine reflected in the decision below has already (and for many years) been applied under the Federal Power Act, with no apparent adverse effects on the electric power industry. *See, e.g., Montana-Dakota Utils. Co. v. Northwestern Pub. Serv. Co.*, 341 U.S. 246 (1951); *Public Serv. Co. v. New Hampshire v. FERC*, 600 F.2d 944 (D.C. Cir. 1979).

There Is No Reason to Hold This Case for Disposition of the Petitions in *AGD*

The Commission does not seek plenary review in this case but suggests that it be held pending the Court's disposition of the petitions in *Associated Gas Distribs. v. FERC*, 893 F.2d 349 (D.C. Cir. 1989), *reh'g denied*, 898 F.2d 809 (D.C. Cir. 1990), *petitions for cert. pending*, Nos. 89-1988, *et al.* (*AGD*), in which it has sought plenary review. That suggestion is unfounded. The Commission's suggestion assumes that the Court will grant its petition in *AGD*—an assumption that may well prove wrong.[28] But even if review were warranted in *AGD*, ~~that~~ this case presents an essentially different question from that presented here, and resolution of *AGD* is highly unlikely to have any bearing on the outcome here.

The question for which review is sought in *AGD* is whether a surcharge imposed to recover certain pipeline "take-or-pay" costs is, as the court of appeals found, retroactive and, therefore, prohibited by the statute's requirement that a pipeline charge only the "filed rate." No question of a Commission waiver (under section 4(d) or otherwise) is involved in any way in that case. Instead, the Commission's rationale in seeking review in *AGD* is that the costs at issue there are "present" costs merely allocated on the basis of past customer purchase decisions.

In this case, by contrast, no one seriously disputes that the Commission's orders impose a retroactive rate increase otherwise forbidden by the statute;[29] the only

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[28] Certain of the respondents here are also respondents in *AGD* and have filed a Brief in Opposition setting forth the reasons why certiorari is not warranted in that case. If the Court agrees, the Commission's suggestion here would of course be moot.

[29] The Commission itself has recognized that its orders authorize a "retroactive change" in costs charged to pipeline customers. *See* note 13, *supra*.

question presented is whether the Commission's section 4(d) waiver power enables it to authorize a result it could not otherwise bring about. In sum, there is nothing in the grounds asserted for review in *AGD* that gives any reason to expect that any foreseeable disposition by the Court of those petitions would affect the holding of the court of appeals in this case.

The Commission's suggestion (Pet. 19) that this case is related to *AGD* in that both involved cost allocation by pipelines in the wake of Order No. 436 and the "massive restructuring of the natural gas market" toward open access is simply wrong. As noted above, the FERC orders that originally authorized retroactive direct billing by the petitioner pipelines all preceded the times when the petitioners became open-access pipelines under Order No. 436. Chief Judge Wald, whose dissent from the denial of rehearing *en banc* in *AGD* was based on her (erroneous) understanding of the role of Order No. 436 in that case, concurred in the denial of rehearing here. Pet. App. 15a.

CONCLUSION

For the reasons set forth above, the petitions for writ of certiorari should be denied.

Respectfully submitted,

GILES D. H. SNYDER
STEPHEN J. SMALL
COLUMBIA GAS TRANSMISSION CORPORATION
1700 MacCorkle Ave., S.E.
Charleston, W.Va. 25325-1273
(304) 357-2326

JOHN H. PICKERING
Counsel of Record
LOUIS R. COHEN
TIMOTHY N. BLACK
GARY D. WILSON
SUSAN D. MCANDREW
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037
(202) 663-6000
Attorneys for Columbia Gas Transmission Corporation

DANIEL L. SCHIFFER
MICHIGAN CONSOLIDATED GAS COMPANY
500 Griswold Street
Detroit, MI 48226
(313) 256-5206

JEFFREY M. PETRASH
DICKINSON, WRIGHT, MOON, VAN DUSEN & FREEMAN
1901 L Street, N.W.
Washington, D.C. 20036
(202) 457-0160
Attorneys for Michigan Consolidated Gas Company

KATHLEEN A. KANE
OBERMAYER, REBMANN, MAXWELL & HIPPEL
14th Floor, Packard Bldg.
15th & Chestnut Streets
Philadelphia, PA 19102
(215) 665-3222
Attorney for Philadelphia Electric Company

LARITO FARINAS
PHILADELPHIA GAS WORKS
800 West Montgomery Ave.
Philadelphia, PA 19122
(215) 684-6982
Attorney for Philadelphia Gas Works

EDWARD J. GRENIER, JR.
WILLIAM H. PENNIMAN
GLEN S. HOWARD
STERLING H. SMITH
SUTHERLAND, ASBILL & BRENNAN
1275 Pennsylvania Ave., N.W.
Washington, D.C. 20004-2404
(202) 383-0100
Attorneys for The Process Gas Consumers Group

MARY E. BALUSS
CHRISTOPHER J. BARR
MORGAN, LEWIS & BOCKIUS
1700 M Street, N.W.
Suite 700
Washington, D.C. 20036
(202) 467-7142
Attorneys for UGI Corporation

August 31, 1990

APPENDIX

APPENDIX

APPENDIX

DEPARTMENT OF ENERGY
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C.

Docket No. RP85-148-000

IN THE MATTER OF
TRANSCONTINENTAL GAS PIPE LINE CORPORATION

PETITION OF TRANSCONTINENTAL GAS PIPE LINE CORPORATION FOR AUTHORITY TO INSTITUTE DIRECT BILLING PROCEDURE FOR RETROACTIVE ORDER NO. 94 PAYMENTS

Communications with respect to this Petition should be addressed to:

*R.V. Loftin, Jr., Vice President
and General Counsel
James A. Porter
Transcontinental Gas Pipe Line
Corporation
P.O. Box 1396
Houston, Texas 77251

and

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* Designated to receive service in accordance with Rule 2010(c) of the Rules of Practice and Procedure.

*Thomas F. Ryan, Jr.
Robert G. Hardy
Andrews & Kurth
1730 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Attorneys for Transcontinental
Gas Pipe Line Corporation

Filed: May 22, 1985

DEPARTMENT OF ENERGY
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C.

Docket No. ————————

IN THE MATTER OF
TRANSCONTINENTAL GAS PIPE LINE CORPORATION

PETITION OF TRANSCONTINENTAL GAS PIPE LINE CORPORATION FOR AUTHORITY TO INSTITUTE DIRECT BILLING PROCEDURE FOR RETROACTIVE ORDER NO. 94 PAYMENTS

Transcontinental Gas Pipe Line Corporation (Transco) hereby petitions, pursuant to Rule 207 of the Commission's Rules, 18 C.F.R. § 385.207, for authority to institute a special, one-time direct billing procedure to recover from its customers retroactive payments made pursuant to Order Nos. 94 and 94A, all as more fully explained hereinbelow.

In support of this Petition, Transco respectfully shows as follows:

I.

The names, titles and mailing addresses of the persons to whom correspondence concerning this proceeding are to be addressed are as follows:

R.V. Loftin, Jr., Vice President
and General Counsel
Transcontinental Gas Pipe
Line Corporation
P.O. Box 1396
Houston, Texas 77251

and

Thomas F. Ryan, Jr.
Andrews & Kurth
1730 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

II.

Transco is a corporation duly organized and existing under the laws of the State of Delaware, with its prinpal place of business in Houston, Texas.

Transco is a natural gas company engaged in the transportation and sale of natural gas in interstate commerce by means of its natural gas transmission system extending from its principal sources of natural gas supply in Texas, Louisiana, Mississippi, and the offshore Gulf of Mexico area through the States of Alabama, Georgia, South Carolina, North Carolina, Virginia, Maryland, Pennsylvania, and New Jersey to its termini in the New York City Metropolitan area. To augment its domestic gas supply sources, Transco also imports natural gas from Canada.

III.

SUMMARY OF PROPOSED DIRECT BILLING PROCEDURE [1]

Because of the inequities and undesirable market distortions inherent in recovering retroactive Order No. 94 costs through PGA filings, Transco seeks authorization to bill customers directly for such costs. As more fully explained below, Transco proposes to calculate each customer's share of such costs for the retroactive period (hereinafter defined as the period July 25, 1980 through August 31, 1984 unless otherwise indicated) based upon a matching of the incurrence of Order No. 94 costs, by month, to the customer's share of system purchases during such months. Such amounts will be billed directly, including interest, in equal monthly installments over a succeeding 12-month period commencing July 1, 1985

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[1] Inasmuch as the instant filing is not a tariff filing, no fee under Part 381 of the Commission's Regulations is required. *See,* 29 FERC ¶ 61,381 (1984).

(or at the customer's option, in a lump sum [2]) or at such later date as may be established in the Commission's order approving the direct billing procedure. Transco also is proposing to refund directly to its customers all retroactive Order No. 94 amounts collected, plus interest, pursuant to Transco's PGA filings in Docket Nos. TA84-2-29-000 and TA85-1-29-000, including the special Order No. 94 surcharge of 4.5 cents per dt contained in Transco's Docket No. TA85-1-29-000 filing, such refund (the principal amounts of which are detailed on Schedule B hereto) to be contingent upon approval of the direct billing procedures proposed in the instant filing. This refund will be made within fifteen days of the date on which the Commission approves Transco's direct billing procedure. In essence, Transco's proposal is designed to place customers in the position they would have been in if no retroactive Order No. 94 costs had been collected in Transco's rates to date, and then to apportion the total costs to customers on the basis of their respective purchase levels from Transco during the period such costs were incurred.

IV.

PERTINENT BACKGROUND

A. *Order 94 Costs*

Pursuant to Section 110 of the Natural Gas Policy Act of 1978, the Commission has established "production-related cost" allowances above the otherwise applicable maximum lawful ceiling price for nautral gas. These allowances encompass certain costs (other than "produc-

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[2] While providing for a lump-sum payment option, Transco anticipates that most, if not all, customers would consider the twelve monthly installment payments to be in the best interests because, among other things, such method eases the financial burden and also could obviate payment, at least in part, if the pending court proceedings (see page 4, *infra*) were to overturn Order No. 94 during the interim.

tion costs") incurred for delivering, compressing, treating or conditioning nautral gas or other specified services. In Order No. 94 (issued July 25, 1980 in Docket No. RM80-47), the Commission stated that generic allowances for compression and gathering would be developed in future orders and made effective as of the date of Order No. 94. On January 24, 1983, the Commission issued Order No. 94-A, titled "Final Rule and Order on Rehearing of Order No. 94" amending the statement of policy. 22 FERC ¶ 61,055. The aforementioned generic allowances were first stated in an Interim Rule also issued January 24, 1983 in Docket Nos. RM80-73 and RM80-47 and were made effective March 7, 1983. The amendments of the Interim Rule were issued as a Final Rule in Order No. 334, issued September 27, 1983. Order 334-A, issued December 27, 1983, denied the petitions for rehearing and petitions for stay of Order 94. The allowances for production-related costs are set out at Section 271.1104 of the Commission's Regulations (18 C.F.R. § 271.1104).

Order Nos. 94 and 94-A have been appealed to the United States Court of Appeals for the Fifth Circuit by Transco and others in *Texas Eastern Transmission Corporation, et al. v. FERC*, No. 83-4390. Briefs have been filed by the parties and oral argument has been held; the case is pending a decision by the court.

Subsequently, the Commission issued Order No. 399-A, 29 FERC ¶ 61,254 (1984), which authorized producers to offset refunds due for Btu measurement requirements [3] by monies due them under Order No. 94. This "offset" procedure was overturned by the court in *Interstate Natural Gas Association of America v. FERC*, D.C. Cir. No. 81-1690, *et al.*, issued March 5, 1985. Such action was taken by the court at the behest of Associated Gas Distributors, a group which includes many of Transco's

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[3] Interstate Natural Gas Association of America v. FERC, 716 F.2d 1 (D.C. Cir. 1983), *cert. denied*, 104 S.Ct. 1615 (1983).

larger customers. Therefore, as matters now stand, retroactive Order No. 94 payments apparently cannot be offset by refunds for the Btu measurement rules.[4]

B. *Transco's Treatment Of Order 94 Costs*

Transco has been invoiced for substantial retroactive Order No. 94 amounts. A substantial part of these amounts has been paid, debited to Account No. 191 and flowed-through in two Transco PGA filings. All of the retroactive Order No. 94 amounts that were paid prior to September 1, 1984 have been reflected in Transco's PGA filing in Docket No. TA84-2-29-000 (effective May 1, 1984)[5] or in Transco's PGA filing in Docket No. TA85-1-29-000 (effective November 1, 1984).[6]

In its PGA filing in Docket No. TA85-3-29-000 (effective April 1, 1985), Transco indicated that it would be seeking Commission authority to direct bill Order No. 94 payments. In that regard, Transco explained that its filing did not reflect the balance (at February 28, 1985) in the appropriate subaccount of Account No. 191 associ-

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[4] It is Transco's understanding that although D.C. Circuit's mandate was issued on May 20, 1985, at least one—and perhaps more—of the interested parties intends to seek a writ of certiorari from the Supreme Court.

[5] In Docket No. TA84-2-29-000, Transco included approximately $2.2 million of retroactive Order No. 94 payments in its PGA deferred account. This amount reflects retroactive payments related to the period July 25, 1980 through August 31, 1983.

[6] In Docket No. TA85-1-29-000, Transco included approximately $22.4 million of retroactive Order No. 94 payments in its PGA deferred account. This amount reflects retroactive payments related to the period July 25, 1980 through February 29, 1984. In addition, Transco requested, and was granted, waiver of the Commission's regulations to include in the PGA and recover through a special surcharge of 4.5 cents per dt, approximately $21.6 million of known installment payments that Transco had not made at the time the PGA was filed but would make before the end of the period the rates in Docket No. TA85-1-29-000 were to be in effect.

ated with the relevant PGA period, $7,074,086, which amount relates to Order No. 94 payments not reflected in the surcharge and not previously contained in the deferred account. This amount remains deferred on Transco's books pending the outcome of the direct billing procedure proposed herein.[7] Transco's filing also explained that its direct billing procedure would include provision for crediting to customers the amounts already paid, including amounts paid through the special 4.5 cents per dt surcharge.

In addition, Transco has paid additional retroactive Order No. 94 amounts since February, 1985 and also is now processing a large amount of retroactive Order No. 94 invoices which, due to the time involved in verifying each such invoice, have not yet been paid. An accurate estimate of the timing of such payments cannot be made at this time.

There are other qualifying producers (*i.e.*, those which have made a proper notice filing in accordance with Section 271.1104 of the Commission's Regulations) to whom Transco also owes a substantial amount of retroactive Order No. 94 costs, but for which Transco has not received invoices. With respect to amounts attributable to the period after March 6, 1983, Transco may not receive invoices since such amounts relate to periods subsequent to the Commission-defined retroactive period and, therefore, as is the case for normal gas cost payments, invoices are not required for payment to be made. Pro-

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[7] In its April 30, 1985 order in Docket No. TA85-3-29-000, the Commission, among other things, ordered Transco to furnish additional information regarding Order No. 94 charges, and to file revised PGA tariff sheets to recover Order No. 94 payments during the period covered by the current PGA, without prejudice to Transco's direct billing proposal. Transco intends to file revised tariff sheets but also to seek a stay of their effectiveness pending action on the instant petition, and to seek clarification of the Commission's April 30 order with respect to the revised PGA filing required thereby.

ducers will be paid for these amounts once Transco has verified the amount of the Order No. 94 allowance due, and these unit amounts are entered into Transco's gas purchase payment system.

V.

DESCRIPTION OF TRANSCO'S PROPOSED DIRECT BILLING PROCEDURE

A. *The "Retroactive" Period Is July 25, 1980 Through August 31, 1984*

Transco proposes to accumulate in a special subaccount of FERC Account No. 191 on its books all retroactive Order No. 94 amounts which it has paid or expects to pay related to the period July 25, 1980 through August 31, 1984. In that connection, Transco has been invoiced for substantial retroactive Order No. 94 amounts related to the period after March 6, 1983 (the effective date of Commission Order No. 94 and the termination date of the Commission-defined "retroactive" period). In numerous cases, these invoices were received several months after the period to which the payment applies and many of these invoices have yet to be verified. Due to the magnitude of these amounts and the time involved in verifying such amounts, these amounts could not be paid within a reasonable time after the period to which payments apply. Therefore, Transco is proposing to include payments related to periods after the Commission-defined "retroactive" period in the instant direct billing procedure. In that regard, however, Transco proposes to exclude from the total retroactive Order No. 94 amounts included in this special subaccount any such payments made over the deferral periods in Docket Nos. TA84-2-29 and TA85-1-29 (September, 1983 through February, 1984, and March, 1984 through August, 1984, respectively) which related to production during those deferral periods. Transco proposes to exclude such amounts from its special

subaccount since it views these amounts as essentially "current" payments and therefore such amounts are more appropriately recovered through the normal PGA mechanism rather than through the proposed direct billing procedure.

B. *Description of Direct Billing Procedure; Refunds For Past Collections*

The total retroactive Order No. 94 amounts which will be debited to Transco's special subaccount will be detailed by the production month to which they apply. These monthly amounts will be allocated to Transco's sales customers based on each such customer's share of purchases during each month of the proposed retroactive period. Allocating these amounts to customers on this basis results in the most equitable distribution of the cost responsibility related to these amounts, as discussed more fully in Part VI below.

As a part of the instant petition, Transco is proposing to refund directly all amounts, plus interest, Transco has recovered from the customers as a result of having included certain of these retroactive Order No. 94 amounts in Transco's PGA filings in Docket No. TA84-2-29-000 and Docket No. TA85-1-29-000, including amounts recovered from Transco's customers as a result of the 4.5 cents per dt special Order No. 94 surcharge which became effective November 1, 1984 in Docket No. TA85-1-29-000. Such refunds, detailed by customer and by PGA filing, are reflected on Schedule B, attached. The refunding of these amounts is contingent upon Transco receiving Commission authority for its direct billing procedure.

C. *Twelve Monthly Installments; Lump Sum Payment Option*

The allocated amounts of retroactive Order No. 94 payments will be billed customers directly, plus interest computed in accordance with the Commission's PGA regula-

tions, in equal monthly installments over a 12-month period beginning July 1, 1985 or such other date as established by the Commission in its order approving this procedure. Transco is proposing such monthly billing in order to ease the financial burden which would be caused by billing customers on a lump sum basis. Moreover, a court decision in the interim on the legality of Order No. 94 may effectively negate any further need for the procedure and subsequent payments thereunder. However, any customer which prefers to pay Transco is allocated share of these retroactive Order No. 94 amounts on a lump sum basis may choose to do so and thereby avoid the additional interest charges due as the result of Transco's proposed twelve monthly installment basis of payment.

D. *Showing Estimated Direct Billing By Customer; Adjustments Will Be Made to Reflect Actual Amounts*

Attached as Schedule A is an estimate of the total amount, excluding interest, Transco proposes to bill each of its customers in order to recover all amounts charged to the special subaccount at the time the direct billing procedure commences. Transco will credit this special subaccount monthly to reflect recovery of these amounts from its customers. As explained earlier, Transco has included in its direct billed amounts estimates of retroactive Order No. 94 amounts which it has been invoiced for but has not yet paid. To the extent Transco pays any amount which differs from the amount it has estimated, it will debit or credit the special subaccount by the amount which the actual payment differs from the estimate. At the end of the 12-month billing period, Transco will transfer any remaining balance or excess in this special subaccount to Account No. 191 and reflect this amount in its next PGA filing. In addition, Transco has reflected in its direct billing calculations approximately $18,900,000 of retroactive Order No. 94 amounts which

have been offset, pursuant to Commission Order No. 399-A, against amounts owed customers under Order No. 93. As previously noted, such offset procedure has been disallowed by order of the court but the court's decision may not be the final word on the subject.[8]

The amounts reflected on Schedule A necessarily are estimates, but Transco believes they are reasonably accurate. In any event, Transco intends to adjust such estimates for actual amounts, plus interest, and anticipates (a) that the actual amounts will not vary significantly from the estimates, and (b) that such actual amounts should be known prior to the completion of the twelve-month billing period. By way of further explanation, for retroactive Order No. 94 payments related to the years 1980, 1981 and 1982 it was necessary, for purposes of allocating these amounts to customers at this time, to estimate the production month in which these payments applied since only annual amounts are available without a detailed review of all producer invoices. For purposes of the estimates contained on Schedule A, Transco allocated each annual amount to the individual months based on total system purchases. While individual producer amounts thus estimated will vary (up and down) from the actual amounts which will be determined after the detailed review of all invoices, the aggregate amount and each customer's share) is not expected to vary from the estimated amounts to any significant de-

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[8] Should the dispostion of the offset procedure for Btu measurement refunds remain unresolved as of the time Transco's direct billing procedure commences, Transco hereby agrees to reduce the balance in its special subaccount by the offset amounts, to reduce each customer's direct bill sums by each such customer's allocable share of these amounts, including interest, and to commence its direct billing procedure using such adjusted amounts. If the offset procedure ultimately is determined to be unlawful, Transco will increase the balance in its special subaccount and increase each customer's allocable share, including interest, utilizing the same procedures set forth herein.

gree. Such review of invoices is underway; substantial man-hours are involved in such undertaking.

Likewise, during the Commission-defined retroactive period July 25, 1980 through March 6, 1983, Transco paid certain gathering allowances which were in effect prior to the Commission approval of the generic allowances under Order No. 94. The allowances approved by the Commission pursuant to Order No. 94 replaced, retroactive to July 25, 1980, the allowances in existence prior to Order No. 94. Any payments made by Transco after March 6, 1983 did not include the full amount of charges related to the allowances approved under No. 94 in instances where other allowances in effect prior to Order No. 94 had already been paid by Transco. In these cases, the amount Transco actually paid retroactively was the difference between the allowance approved under Order No. 94 and the allowance in effect prior to Order No. 94. An analysis of representative months of the retroactive period reflects that approximately 91 percent of the total Order No. 94 amounts were actually paid on a retroactive basis. The remaining 9 percent were paid on a current basis via the allowances in effect prior to Order No. 94. Transco has utilized such estimated breakdown in calculating the direct billed amounts shown on Schedule A. Again, such amounts will be adjusted for actuals, plus interest, after the detailed review of invoices has been completed, and the final amounts are not expected to vary significantly from the estimated amounts.

At the time Transco completes the accounting review and adjusts its direct billing amounts to reflect actuals, those customers, if any, which opted for the lump-sum procedure will have the option to pay additional amounts, if any, on a lump-sum basis or to switch to a monthly basis, including interest, over the remaining months of the twelve-month billing period. Any reductions that may be due as a result of adjusting for actuals will be distributed to customers which opted for lump-sum billing

on a lump-sum basis, and to those customers which opted for monthly payments by reducing the remaining monthly billings by equal monthly amounts.

E. *Calculation of Interest on Payments and Credits*

The amounts which appear on Schedule A represent principal amounts only and therefore exclude any applicable interest. Transco will adjust the principal amounts to reflect interest to the date at which the billing procedure commences. Such interest on retroactive Order No. 94 payments will be calculated from the date of payment by Transco through the date the billing procedure commences. Inasmuch as Transco is proposing to give customers the option to pay these amounts over a 12-month period, additional interest will be calculated on these net amounts in order to determine each such customer's monthly payment. In addition, interest will also be calculated on amounts shown on Schedule B which will be refunded to each customer. As described earlier, these refunds result from the fact that certain retroactive Order No. 94 amounts have been included in PGA filings in Docket Nos. TA84-2-29-000 and TA85-1-29-000. Interest on these refund amounts will be calculated from the date when these amounts were paid by the customer through the date when the direct billing procedure commences. All such interest shall be calculated in accordance with the Commission's PGA regulations at the applicable interest rate in effect from time to time.

VI.

REASONS SUPPORTING DIRECT BILLING PROCEDURE

The direct billing procedure is the most logical and equitable method of assigning cost responsibility for this extraordinary, out-of-period item. These substantial retroactive payments relate to gas purchased by Transco from producers since mid-1980. Clearly, the matching

of such out-of-period costs to the customers' respective purchases, by month, during the period to which the costs are related is the most equitable method of allocating such costs. Thus, the proposed procedure will most clearly approximate the cost assignment that would have occurred had the payments been made at the same time as the gas purchases to which they relate. By the same token, collecting retroactive Order No. 94 payments through the regular PGA procedures would lead to a distortion of marketing signals because such costs relate to purchases made during prior periods.

Direct billing is supported not only by logic and equity, but also by precedent. Collecting these large retroactive Order No. 94 amounts through a pipeline's regular PGA mechanism is inconsistent with the Commission's treatment of other such out-of-period costs. Specifically, in Order No. 93, the Commission established a direct refund procedure for Btu measurement adustments wherein the pipeline's customers would be refunded these amounts based on their respective shares of purchases over the affected period. The Commission determined that flowing these large refund amounts through a pipeline's PGA could result in an inequitable distribution of refunds to the pipeline's customers. As the Commission explained in Order No. 399 issued September 20, 1984, the PGA mechanism is not appropriate for large out-of-period refunds (Mimeo, pp. 32-33):

> "The Commission believes that the use of the PGA mechanism to pass through the refunds could result in inequities. For example, customers which do not now purchase gas from an interstate pipeline would not receive a refund with a PGA pass-through, and it would be unfair if the customers actually overcharged did not receive a refund in the same proportion to their overcharges, given the magnitude and long-term nature of the overcharges.

> In contrast, the Commission believes that the lump-sum mechanism is a fair and equitable procedure. Specifically, the lump-sum mechanism ensures that refunds will be made to those customers who overpaid the pipelines, and this mechanism will return the refunds to the ultimate consumer more quickly. Finally, the Commission recognizes that the Btu refund may temporarily disrupt the current gas market. But, the Commission believes that a lump-sum cash payment requirement will disrupt the current natural gas market less than the use of the PGA mechanism, since a lump-sum gas payment is made to those over-charged and does not adjust current prices."

Transco believes that retroactive Order No. 94 payments should be treated in a similar fashion, particularly in light of the fact that Transco has numerous customers on its system that currently are purchasing at much lower levels than they did during the period to which the retroactive Order No. 94 amounts apply. If Transco continued to flow these amounts through its PGA, such customers would be assessed substantially less than their equitable portion of the cost responsibility related to these amounts. Not only does direct billing result in the most equitable treatment of customers, it also effectively forecloses any and all allegations or concerns regarding potential manipulation of PGA filings for competitive or other purposes.

It should also be noted that the Commission has approved direct billing of Order No. 94 costs in *Natural Gas Pipeline Company of America*, Docket No. RP85-18-000, letter order issued January 29, 1985, and has pending before it in Docket No. RP83-8-000 a settlement proposal —supported by Commission Staff—which would establish direct billing for Tennessee Gas Pipeline Company, a competitor of Transco.

VII.

MISCELLANEOUS MATTERS

A. Transco wishes to make it abundantly clear that the instant proposal is not intended to—nor will it—circumscribe or restrict in any way interested parties' rights with respect to questioning the appropriateness of individual retroactive Order No. 94 payments. *See*, letter order issued January 29, 1985 in *Natural Gas Pipeline Company of America*, Docket No. RP85-18-000, *mimeo* at 2.

B. Transco is serving the instant petition on its customers, state commissions and other parties normally served with Transco's rate filings, and on those additional parties which have intervened in Transco's PGA filing in Docket No. TA85-3-29-000 which relates to the instant filing in the manner explained hereinabove. Transco submits that good cause exists for expedited consideration and, to that end, requests that an abbreviated intervention and comment period be established.

C. Transco requests that the Commission grant any waivers of its Regulations as may be required to make the direct billing procedure effective as proposed.

VIII.

CONCLUSION

For all of the foregoing reasons, Transcontinental Gas Pipe Line Corporation respectfully submits that the above-described proposed direct billing procedure is in the public interest and should be authorized as expeditiously as possible.

Respectfully submitted,

TRANSCONTINENTAL GAS PIPE LINE CORPORATION

By /s/ Robert G. Hardy
Its Attorney

TRANSCONTINENTAL GAS PIPE LINE CORPORATION

SCHEDULE A

TOTAL AMOUNT OF RETROACTIVE ORDER NO. 94
AMOUNTS TO BE INCLUDED IN PROPOSED DIRECT
BILLING PROCEDURE

Rate Schedule	Customer	Total Retroactive Amounts 7/80-8/84
CD-1, PS-1, E-1	Atlanta Gas Light	$ 3,746,990.63
	United Cities, GA	305,039.27
	Total	$ 4,052,029.89
CD-2, PS-2, E-2	Carolina Pipeline	1,148,214.97
	Clinton-Newberry	244,356.19
	Columbia-Dranesville	576,254.60
	Commonwealth	3,462,946.37
	Danville	741,321.05
	Fort Hill	443,657.85
	Greenwood	352,906.52
	Laurens	218,533.72
	Lexington	342,136.18
	Lynchburg	438,135.18
	North Carolina Gas	370,153.65
	North Carolina Natural	5,219,044.03
	Piedmont	8,628,318.75
	Public Service of N.C.	5,956,928.22
	Shelby	477,508.30
	Washington Gas Light	3,769,022.30
	Total	$32,389,437.87
CD-3, PS-3, E-3 S-2	Brooklyn Union	10,467,032.67
	Columbia-Rockville	360,444.86
	Columbia-Downington	511,156.25
	Columbia-Muncy	570,630.38
	Consolidated Edison	17,983,883.88
	Delmarva	2,896,159.86
	Eastern Shore	1,056,760.22
	Elizabethtown	3,760,284.07
	Long Island Lighting	8,310,738.03
	National Fuel	866,463.97
	Pennsylvania Gas & Water	2,014,068.26
	Philadelphia Electric	5,837,284.24
	Philadelphia Gas Works	5,599,448.42
	Public Service E & G	20,362,432.34
	South Jersey	5,242,194.43
	Union Gas Company	538,467.72
	Total	$86,377,449.61

Rate Schedule	Customer	Total Retroactive Amounts 7/80-8/84
FI-2	Owens-Corning	240,110.47
G & OG 1, PS-1	Alexander City	115,236.47
	Bowman, GA	3,064.11
	Buford, GA	71,715.15
	Butler, AL	7,677.12
	Clanton, AL	32,951.62
	Commerce, AL	47,967.30
	Covington, GA	127,684.38
	East Central Alabama	48,751.35
	Elberton, GA	61,368.41
	Hartwell, GA	49,506.81
	Lawrenceville, GA	94,086.44
	Liberty, MS	7,011.12
	Linden, AL	77,360.33
	Madison, GA	15,338.66
	Maplesville, AL	6,293.11
	Monroe, GA	101,080.07
	Roanoke, AL	34,977.63
	Rockford, AL	1,977.06
	Royston, GA	19,801.31
	Social Circle, GA	20,131.85
	Sugar Hill, GA	17,454.23
	Thomaston, AL	1,693.51
	Toccoa, GA	99,044.93
	Tri-County Natural Gas	76,672.92
	Wadley, AL	3,874.27
	Wedowee, AL	5,758.20
	Winder	198,435.30
	Total	$1,346,913.64
G & OG 2, PS-2	Bessemer City, N.C.	52,202.77
	Blacksburg, S.C.	27,419.10
	Fountain Inn, S.C.	40,537.27
	Greer, S.C.	211,678.36
	Kings Mountain, N.C.	122,558.36
	Southwestern Va. Gas	254,909.73
	Union, S.C.	182,884.98
	United Cities—S.C.	316,862.13
	Total	$1,209,052.79

Rate Schedule	Customer	Total Retroactive Amounts 7/80-8/84
G & OG 3, PS-3	Columbia Gas (New Village)	127,695.48
	Fredrick Gas Co.	158,536.18
	U.G.I. Corporation	175,992.35
	Total	$462,224.01
ACQ-3	Consolidated Gas Supply	1,058,111.59
	North Penn	561,051.42
	Total ACQ-3	$1,619,163.01
X-20	Industrial Natural Gas	3,152.99
	Grand Total	$127,699,534.28

TRANSCONTINENTAL GAS PIPE LINE CORPORATION

SCHEDULE B

PRINCIPAL AMOUNT OF PROPOSED REFUNDS TO CUSTOMERS RELATED TO TRANSCO'S PROPOSED DIRECT BILLING PROCEDURE FOR RETROACTIVE ORDER NO. 94 AMOUNTS

			Refund Related To Docket No. TA 85-1-29		
Rate Schedule	Customer	Refund Related To Docket No. TA 84-2-29 [1]	Regular Deferred Account [2]	4.5 Cents/DT Special Surcharge [3]	Amount Total
CD-1, PS-1, E-1	Atlanta Gas Light	$ 60,708.99	$ 725,972.48	$ 700,311.15	$ 1,486,992.62
	United Cities, GA	5,258.03	48,571.51	46,854.63	100,684.17
	TOTAL	$ 65,967.02	$ 774,543.99	$ 747,165.78	$ 1,587,676.79
CD-2, PS-2, E-2	Carolina Pipeline	$ 389.19	$ 50,791.95	$ 48,996.59	$ 100,177.73
	Clinton-Newberry	2,651.61	47,573.46	45,891.86	96,116.92
	Columbia-Dranesville	(0.42)	49,510.84	47,760.75	97,271.16
	Commonwealth	46,090.66	323,543.41	312,106.95	681,741.01
	Danville	11,183.14	135,554.54	130,763.03	277,500.70
	Fort Hill	7,218.74	75,410.13	72,744.57	155,373.44
	Greenwood	6,219.09	57,402.15	55,373.13	118,994.37
	Laurens	3,463.06	36,582.37	35,289.27	75,334.70
	Lexington	7,364.55	61,467.79	59,295.06	128,127.41
	Lynchburg	8,219.28	55,911.81	53,935.47	118,066.56
	North Carolina Gas	5,170.84	58,971.28	56,886.80	121,028.92
	North Carolina Natural	78,127.39	802,234.70	773,877.69	1,654,239.78
	Piedmont	152,148.71	1,160,172.12	1,119,162.92	2,431,483.75
	Public Service of N.C.	99,000.50	1,033,382.59	996,855.08	2,129,238.16

	Shelby	9,740.53	81,172.86	78,503.60	169,216.99
	Washington Gas Light	50,968.70	230,162.29	222,026.63	503,157.62
	TOTAL	$ 487,955.56	$ 4,259,844.29	$ 4,109,269.37	$ 8,857,069.22
CD-3, PS-3, E-3, S-2	Brooklyn Union	$ 81,349.37	$ 1,091,054.60	$ 1,052,488.53	$ 2,224,892.50
	Columbia-Rockville	199.03	30,406.61	29,331.81	59,937.44
	Columbia-Downington	8.05	22,792.10	21,986.46	44,786.61
	Columbia-Muncy	1,446.03	69,529.94	67,072.23	138,048.21
	Consolidated Edison	322,916.80	2,215,474.10	2,137,162.59	4,675,553.49
	Delmarva	55,263.94	402,838.69	388,599.35	846,701.98
	Eastern Shore	14,623.18	116,395.92	112,281.62	
	Elizabethtown	50,295.18	433,298.99	412,982.95	901,577.12
	Long Island Lighting	162,424.23	1,060,096.93	1,022,625.14	2,245,146.29
	National Fuel	9,658.71	91,045.68	87,827.45	188,531.84
	Pennsylvania Gas & Water	34,073.85	324,722.69	313,244.55	672,041.09
	Philadelphia Electric	43,138.66	1,041,661.93	1,004,841.77	2,089,642.35
	Philadelphia Gas Works	18,006.47	807,558.41	779,013.23	1,604,578.11
	Public Service E & G	235,397.87	1,488,800.91	1,436,175.50	3,160,374.28
	South Jersey	65,441.92	729,663.53	703,871.73	1,498,977.17
	Union Gas Company	7,007.70	63,307.77	61,070.00	131,385.47
	TOTAL	$1,101,250.97	$ 9,988,648.82	$ 9,635,574.87	$20,725,474.66
FI-2	Owens-Corning	3,811.80	22,376.18	21,585.24	47,773.22
G & OG 1, PS-1	Alexander City	1,370.04	22,012.93	21,234.83	44,617.80
	Bowman, GA	27.17	789.07	761.18	1,577.41
	Buford, GA	588.35	16,992.10	16,391.48	33,971.93
	Butler, AL	57.95	1,635.60	1,577.79	3,271.34
	Clanton, AL	314.48	7,172.27	6,918.75	14,405.51
	Commerce, AL	503.78	9,793.61	9,447.44	19,744.83

TRANSCONTINENTAL GAS PIPE LINE CORPORATION—Continued

Rate Schedule	Customer	Refund Related To Docket No. TA 84-2-29 [1]	Refund Related To Docket No. TA 85-1-29 Regular Deferred Account [2]	Refund Related To Docket No. TA 85-1-29 4.5 Cents/DT Special Surcharge [3]	Refund Related To Docket No. TA 85-1-29 Amount Total
	Covington, GA	1,917.26	27,892.56	26,906.63	56,716.45
	East Central Alabama	564.62	9,953.76	9,601.92	20,120.30
	Elberton, GA	629.80	12,520.52	12,077.96	25,228.28
	Hartwell, GA	679.94	10,448.38	10,079.06	21,207.37
	Lawrenceville, GA	821.19	24,440.40	23,576.49	48,838.08
	Liberty, MS	13.08	941.28	908.01	1,862.37
	Linden, AL	1,932.82	13,489.28	13,012.47	28,434.57
	Madison, GA	112.63	3,803.29	3,668.85	7,584.77
	Maplesville, AL	43.05	1,746.96	1,685.21	3,475.21
	Monroe, GA	1,396.31	19,916.52	19,212.53	40,525.36
	Roanoke, AL	676.63	7,472.32	7,208.19	15,357.13
	Rockford, AL	11.09	486.13	468.95	966.16
	Royston, GA	158.26	4,389.66	4,234.50	8,782.43
	Social Circle, GA	336.94	4,165.52	4,018.28	8,520.73
	Sugar Hill, GA	152.74	4,646.09	4,481.87	9,280.69
	Thomaston, AL	8.98	378.84	365.45	753.26
	Toccoa, GA	1,157.62	19,114.40	18,438.75	38,710.77
	Tri-County Natural Gas	1,354.16	14,020.57	13,524.98	28,899.70
	Wadley, AL	21.86	1,087.15	1,048.73	2,157.74
	Wedowee, AL	34.30	1,442.01	1,391.04	2,867.35
	Winder	4,111.47	32,299.39	31,157.69	67,568.55
	TOTAL	$ 18,996.51	$ 273,050.61	$ 263,398.95	$ 555,446.07

G & OG 2, PS-2	Bessemer City, N.C.	$ 711.66	$ 6,029.05	$ 5,815.94	$ 12,556.65
	Blacksburg, S.C.	474.65	5,516.05	5,321.07	11,311.77
	Fountain Inn, S.C.	583.23	7,152.54	6,899.72	14,635.48
	Greer, S.C.	4,375.29	33,128.06	31,957.07	69,460.42
	Kings Mountain, N.C.	1,702.19	20,753.78	20,020.19	42,476.16
	Southwestern Va. Gas	4,393.88	37,942.70	36,601.52	78,938.09
	Union, S.C.	3,109.71	32,995.72	31,829.40	67,934.82
	United Cities—S.C.	4,258.30	39,211.73	37,825.70	81,295.73
	TOTAL	$ 19,608.91	$ 182,729.62	$ 176,270.58	$ 378,609.11
G & OG 3, PS-3	Columbia Gas (New Village)	$ 2,666.34	$ 17,609.97	$ 16,987.50	$ 37,263.81
	Fredrick Gas Co.	2,409.36	16,148.13	15,577.34	34,134.83
	U.G.I. Corporation	2,359.34	32,558.57	31,407.71	66,325.62
	TOTAL	$ 7,435.05	$ 66,316.67	$ 63,972.54	$ 137,724.26
ACQ-3	Consolidated Gas Supply	$ 0.00	$ 0.00	$ 0.00	$ 0.00
	North Penn	14,189.49	0.00	0.00	14,189.49
	TOTAL ACQ-3	$ 14,189.49	$ 0.00	$ 0.00	$ 14,189.49
	GRAND TOTAL	$1,719,215.32	$15,567,510.18	$15,017,237.33	$32,303,962.83

[1] Amounts collected from customers as a result of having included certain retroactive Order 94 amounts in Transco's regular PGA deferred account in Docket No. TA 84-2-29 (effective May 1, 1984).

[2] Amounts collected from customers as a result of having included certain retroactive Order 94 amounts in Transco's regular PGA deferred account in Docket No. TA 85-1-29 (effective November 1, 1984).

[3] Refunds related to Transco's 4.5 cents/DT special order No. 94 surcharge in Docket No. TA 85-1-29 effective November 1, 1984.